

Inspector-General of the Australian Defence Force (IGADF) Own-Initiative Inquiry 1/24 “Weaponisation” of the Military Justice System.

This submission is made by
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Key Issues and Objectives

- System Weaponisation: Evidence of military justice system being misused to cause harm,
- Procedural Failures: Increasing grievances and failed investigations,
- Limited Compensation: Ineffective CDDA scheme with significant limitations, and
- Reform Goals: Establish oversight, improve training, and implement proper reparations.

Introduction

On 16 August 2024, the Inspector-General of the Australian Defence Force (IGADF) commenced an independent inquiry into allegations and perceptions that the military justice system has been, or has the potential to be, ‘weaponised’ or abused such that it may cause harm. While focusing primarily on cases from 2020 onwards, this inquiry acknowledges the significance of historical patterns in shaping necessary reforms. In understanding how systemic injustices take root and persist, we must, however, examine their insidious evolution. What begins as seemingly minor procedural oversights or institutional biases gradually metastasises, becoming deeply entrenched in organisational DNA. This entrenchment makes historical analysis not just valuable, but crucial - it illuminates the origin points of today’s systemic failures.

This submission reveals critical flaws in the military justice system’s procedures and implementation. A case study in Section 2 of this submission shows how Chain of Command personnel abused the system, causing unwarranted harm to a Defence member and their spouse. Their misuse of authority caused significant distress to both individuals and highlights the urgent need for comprehensive training reforms. These reforms must ensure compliance with administrative law principles, maintain procedural fairness, prevent defamatory actions, and preserve the integrity of the military justice framework. Such changes are essential to prevent ongoing systemic failures that have clearly impacted many ADF members and their dependants.

Statistical trends are broadly reported in the research and suggest a year-on-year increase in procedural grievances and failed investigations, with corresponding adverse impacts on both individual rights and operational efficiency. Each compromised investigation initiates a chain of administrative and legal consequences, resulting in substantial resource expenditure and diminished institutional credibility. To remedy these deficiencies, this submission recommends the following reforms:

- Require mandatory investigative training and professional ethics certification for all investigating [inquiry] officers, along with external reviews of complaints and competency,
- Establish clear jurisdictional boundaries between disciplinary and criminal proceedings,

- Improve oversight mechanisms and procedural safeguards to maintain higher standards to mitigate conflicts of interest, nepotism, and corruption,
- Impose strict disciplinary measures on ADF members who deliberately engage in misconduct that harms fellow service members,
- Introduce corrective action and reparations for those impacted by injustices, and
- Consider remodelling the current Compensation for Detriment caused by Defective Administration (CDDA) scheme.¹ Some common criticisms of the CDDA Scheme include:
 - Limited scope - only covers administrative errors, not policy decisions or legislation,
 - Discretionary nature - compensation payments are not guaranteed even when detriment is proven,
 - Complex application process that can be difficult for claimants to navigate,
 - Long processing times for claims,
 - Relatively low compensation amounts compared to losses in some cases, and a
 - Lack of independent review process - decisions are typically made by the same department that caused the detriment.

Indeed, these systemic weaknesses could potentially be exploited as a form of administrative weaponisation. Here's how:

- The limited scope and discretionary nature could be used to deny legitimate claims by classifying issues as "policy decisions" rather than administrative errors,
- The complex application process and long processing times could be used to discourage or wear down claimants,
- The lack of independent review means departments could systematically reject claims without proper oversight, and
- Low compensation amounts could be strategically used to make pursuing claims not worth the effort.

The proposed reforms in this submission suggest immediate and measurable benefits. By strengthening evidence procedures, ensuring fair process, and guaranteeing legally sound outcomes, these changes could improve the military justice system's effectiveness and reliability. Professional investigators and regular performance reviews would help identify system-wide issues while upholding ethical standards and managing conflicts of interest. Corrective action and reparation policies are crucial for organisations that value their workforce. However, ADF members lack access to a strong reparation framework that acknowledges past wrongs and provides real solutions for those affected by failed administrative inquiries. The current system fails to adequately address non-combat trauma, discrimination, and retaliation, leaving many

¹ Department of Finance, (2021), "Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme). 13 May 2021, Australian Government. Retrieved from <https://www.finance.gov.au/individuals/act-grace-payments-waiver-debts-commonwealth-compensation-detriment-caused-defective-administration-cdda/scheme-compensation-detriment-caused-defective-administration-cdda-scheme>

grievances unresolved. This has eroded trust in the ADF, harmed both member retention and recruitment, and failed to demonstrate a proper duty of care to serving members and veterans' wellbeing—making systematic reform and proper reparation urgent priorities.

In conclusion, preserving justice and procedural integrity in our military justice framework requires immediate action. These reforms will serve to better protect ADF members' fundamental rights and career prospects. The evidence demands prompt consideration of these vital reforms to prevent further systemic deterioration.

Justice cannot wait.



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About the Author

Dr Kay Danes OAM is a distinguished expert in military welfare and veterans' advocacy, with an extensive portfolio of strategic leadership roles and academic achievements. As former President of Army Families (WA) Inc and the 1st Commando Regiment Auxiliary, and member of Special Air Service Regiment Auxiliary, she has shown exceptional leadership in military family support initiatives. Her influential contributions to defence policy reform include key research submissions to Defence Inquiry Reviews, Royal Commissions, and Senate inquiries. Through these efforts, she has helped shape workplace reform for defence personnel and advance the interests of ADF members, veterans and first responders.

Dr Danes holds a PhD from the School of Law & Justice at Southern Cross University, a Master's in Human Rights from Curtin University and varying other professional qualifications, that along with decades of lived experience, establish her as a leading expert in improving defence personnel welfare and advocacy.

Relevant readings

Kay Danes and Glenn Kolomeitz (2021), "Submission to the Royal Commission Defence and Veteran Suicide 2021," GAP Veteran & Legal Services, 18 November 2021.

NB: In our submission to the Royal Commission, Glenn Kolomeitz and I raised serious concerns about maladministration and weaponisation of the military justice system, highlighting how these issues significantly impact the wellbeing of serving members. However, while the Royal Commission focused heavily on mental health and lived experiences of suicide victims and families, it failed to conduct any meaningful investigation into these service-related grievances. This significant oversight leaves unaddressed a critical factor contributing both to serving member and veteran distress.

https://www.defencelivesmatter.com/_files/ugd/c5f951_8170812bc3234855ba3acf0710e64cdc.pdf

Kay Danes, (2023) "Reflections: an oversight entity to promote the wellbeing of ADF serving members, veterans and families." Personal Submission. 10 DEC 2023.

https://www.defencelivesmatter.com/_files/ugd/c5f951_b8864a2678964e24811b26a608757a00.pdf

Kay Danes, (2023) 'A Conflict Resilient Workplace: Transformative best practice in the Australian Defence Force workplace.' (Submission to the Inspector-General of the Australian Defence Force (IGADF) Twenty Year Review. 21 Nov 2023.

https://www.defencelivesmatter.com/_files/ugd/c5f951_1a57629faf0242c58317bf269d40d6b4.pdf

Kay Danes, (2021). 'Pleading Positive Reform: An analysis of suicide risk, self-harm and reputational peril.'

https://www.defencelivesmatter.com/_files/ugd/c5f951_86bb5ca6510c428a9f6d7392513adc35.pdf

SCOPE OF THE INQUIRY

The Inquiry is to consider and make recommendations about:

1. What is meant by the term 'weaponisation of the military justice system?'
2. To what extent military justice system processes appear to have been abused within the Australian Defence Force?
3. Which military justice system processes are most susceptible to abuse?
4. What the key reasons and causes for such behaviour and actions are.
5. What mechanisms exist for identifying potential abuse of the military justice system and for holding commanders to account who are found to abuse military justice processes and whether these mechanisms are effective?
6. How any abuses might be minimised or eliminated.

1. What is meant by the term 'weaponisation of the military justice system?'

This section discusses the 'weaponisation' of the ADF military justice system, which occurs when legal and administrative processes are misused beyond their intended disciplinary purposes. This misuse encompasses various mechanisms including investigative procedures, administrative inquiries, and disciplinary protocols. Complainants often face significant challenges such as deterrence from filing complaints, retaliatory actions, and limited access to fair processes. This section concludes that comprehensive systemic reform is essential to restore the system's integrity and ensure proper adherence to principles of natural justice.

My extensive experience in military justice reform advocacy has shown documented evidence of legal mechanisms being misused beyond their intended purpose. I maintain that this misuse may undermine the core goals of military discipline and operational effectiveness. The adverse implications of such misuse for complainants include:

- Coercive deterrence and apprehension of adverse administrative action in relation to complaint lodgement,
- Diminished procedural confidence and perceived breach of principles of natural justice,
- Exposure to retaliatory workplace disciplinary proceedings lacking substantive merit,
- Professional detriment arising from protected disclosures, and
- Compromised access to independent tribunal processes and procedural fairness.

I believe, systemic reform is crucial to restoring integrity and fairness to the military justice system. Misuse of legal mechanisms not only undermines military discipline and operational effectiveness but also creates a hostile environment for those seeking justice. The adverse effects on complainants, from coercive deterrence to compromised tribunal access, highlight the urgent need for comprehensive reforms that prioritise procedural fairness, protect whistleblowers, and ensure independent oversight. Only through such reforms can the military justice system fulfill its intended purpose of maintaining discipline while upholding the principles of natural justice.

2. To what extent military justice system processes appear to have been abused within the Australian Defence Force?

This section discusses apparent abuses in the ADF's military justice system, highlighting several key issues:

- Systematic bias in fact-finding and administrative inquiry processes, as revealed by the Royal Commission into Defence and Veteran Suicide,
- Violations of natural justice through selective briefings and evidential cherry-picking, including systematic exclusion of complainant testimonies,
- Significant conflicts of interest issues that breach statutory obligations and common law principles, and
- Failures in disclosing conflicts of interest, leading to biased outcomes and compromised fairness.

A specific case (DAAI Inquiry 110187 - IGADF 102/21) is cited as an extreme example of the military justice system being weaponised.

The Royal Commission into Defence and Veteran Suicide, alongside established principles of Australian administrative law and human rights obligations, reveals troubling patterns of procedural misconduct in the ADF's military justice system that may violate fundamental rights. Most concerning is the systematic bias in fact-finding and administrative inquiry processes, as documented in numerous submissions to the Royal Commission.

The ADF's conduct of selective briefings and evidential cherry-picking during these processes suggests violations of natural justice—a cornerstone of Australian administrative law—and Australia's international human rights commitments, particularly Article 14 of the International Covenant on Civil and Political Rights regarding fair hearings. The systematic exclusion of complainant and witness testimony, while favouring potentially prejudiced third-party accounts, raises serious concerns about compliance with Commonwealth model litigant obligations.

The ADF's military justice system faces significant challenges regarding conflicts of interest when examined through Australian public sector governance standards and *the Public Governance, Performance and Accountability Act 2013*.² Undisclosed conflicts in fact-finding and administrative inquiries breach both statutory obligations and common law principles on administrative decision-making bias. These conflicts often produce outcomes that warrant review under administrative law, as they risk violating ADF members' and families' rights under Commonwealth protective frameworks, including work health and safety legislation and anti-discrimination laws. Maintaining public confidence requires implementing robust conflict-of-interest protocols and improving procedural transparency.

The military justice system's integrity suffers when officers fail to disclose conflicts of interest—whether through deliberate choice or lack of awareness. These failures have significantly undermined natural justice principles and eroded trust in the organisation's ability to conduct impartial investigations. Research demonstrates that hidden conflicts lead to biased outcomes, compromised fairness, and decisions that can unjustly impact service members' careers and their families' wellbeing. To rebuild credibility, the system must strictly enforce conflict-of-interest protocols and ensure transparent investigations.

I recommend the panel appointed to this review contact the Office of the IGADF to seek access to the following case (DAAI Inquiry 110187 - IGADF 102/21), as it demonstrates an extreme example of a most recent case of weaponisation of the military justice system. This inquiry was initiated following my complaint to the Chief of Army on 10 December 2021 regarding unacceptable behaviour toward an ADF member I represent. It is my firm belief that the completion and analysis of this Inquiry will provide critical insights necessary for comprehensive reform of the military justice system.

Reference Documents:

DAAI Inquiry 110187 - IGADF 102/21
Correspondence: IGADF/BN43519105

²Department of Finance, (2024). Public Governance, Performance and Accountability Act 2013. 12 September 2024. Australian Government. Retrieved from <https://www.finance.gov.au/government/managing-commonwealth-resources/pgpa-legislation-associated-instruments-and-policies>

Key issues:

- Substantial failures identified in the Inquiry Officer Inquiry (IOI) process,
- Violations of statutory obligations and common law principles under Australian law,
- Multiple instances of alleged corrupt conduct by defence personnel and organisations, specifically, but not exhaustive are represented in potential violations of:
 - The *Public Governance, Performance and Accountability Act 2013*
 - The *Criminal Code Act 1995*
 - The *Privacy Act 1974*
 - The *Telecommunications Act 1997*
 - *Section 39 of the Crimes Act 1914 (Cth)*.

Primary Allegations:

- Deliberate defamation of whistleblowers in contravention of *Public Interest Disclosure Act 2013*,
- Systematic maladministration and misfeasance in public office,
- Misuse of position and financial impropriety,
- Deliberate concealment of misconduct,
- Infringement of service members' and families' fundamental rights under:
 - Varying ADF regulations,
 - Commonwealth laws, and
 - *The Defence Force Discipline Act*.

Pattern of Conduct:

Evidence demonstrates systematic maladministration specifically designed to:

- Suppress legitimate complaints, and
- Protect wrongdoers from accountability.

Administrative Violence

The Royal Commission into Defence and Veteran Suicide has uncovered a disturbing pattern of institutional harm within the ADF's military justice framework. At its core, the Commission revealed substantial *prima facie* evidence of procedural impropriety, particularly in fact-finding procedures and administrative investigations. This systemic issue manifests through selective briefings and biased administrative inquiries that consistently favour the Defence perspective, while systematically undermining complainants through selective evidence inclusion, omission of vital testimonies, and overemphasis on potentially prejudiced third-party statements. These procedural deficiencies create an environment where those seeking justice face systematic attacks on their credibility through potentially vexatious testimony, representing serious breaches of natural justice principles.

The term "administrative violence" emerged during the Commission to describe this systemic abuse, highlighting how administrative procedures themselves become a form of institutional harm. This concerning pattern is further evidenced by over 6000 submissions to the Commission

that documented widespread physical and sexual violence,³ demonstrating the pervasive nature of both administrative and physical forms of institutional violence within the system.⁴

Based on the identified issues in the ADF military justice system, there are key recommendations that may mitigate administrative violence. These include implementing independent oversight of administrative investigations to ensure unbiased fact-finding procedures, creating safeguards against selective briefings and biased administrative inquiries, and creating clear guidelines to protect complainants from credibility attacks and vexatious testimony. Regular audits of administrative procedures should be instituted to ensure compliance with natural justice principles. It is also crucial to provide comprehensive training for personnel involved in administrative investigations to recognise and prevent institutional bias.

These measures would help address the systemic issues identified by the Royal Commission and work to prevent the perpetuation of institutional harm through administrative procedures.

Upholding due process and maintaining transparency.

Systemic issues not only compromise the integrity of military justice but also risk eroding the fundamental rights of service members who deserve a fair and transparent process when seeking redress. A comprehensive analysis reveals several systemic issues that demand urgent attention:

First, the administrative inquiry process suffers from a concerning lack of transparency. While Freedom of Information requests are technically available, excessive redaction severely limits their effectiveness as an oversight mechanism. This opacity is further compounded by troubling discrepancies between oral testimonies and written transcripts.

Second, the current investigation framework raises serious procedural concerns. Defence Inquiry Officers wield considerable discretion in evidence collection, with no obligation to include all testimony from affected ADF members. More worryingly, there have been documented instances of selective witness inclusion that appears to favour institutional interests over impartial fact-finding.

Thirdly, the human cost of these procedural deficiencies cannot be overstated. Administrative inquiries often stretch into lengthy processes that exact a heavy emotional toll on ADF members and their families, potentially deterring legitimate complaints and undermining trust in the system.⁵

³ Coleman, Nikki (2023) "'Moral Courage: When the 'Line in the Sand' Demands a Response'", The International Journal of Ethical Leadership: Vol. 10, Article 4.

https://www.defencelivesmatter.com/_files/ugd/c5f951_053c94cf80b84648b98fd20e64c19e93.pdf

⁴ Ben Wadham and James Connor, 2024. 'Didn't care enough: here's what the Royal Commission into Defence and Veteran suicide found.' NSW Sydney Newsroom (10 Sep 2024), Retrieved <https://www.unsw.edu.au/newsroom/news/2024/09/didnt-care-enough-heres-what-the-royal-commission-into-defence-and-veteran-suicide-found>

⁵ Final report by Royal Commission into Defence and Veteran Suicide. The Evidence. <https://defenceveteransuicide.royalcommission.gov.au/publications/evidence>

Weaponised misinformation.

Evidence in administrative inquiry reveal multiple instances where incorrect or misleading information is provided to Defence Ministers and departmental officials (Defence Force Ombudsman, Australian Human Rights Commission, Royal Commission into Defence and Veteran Suicide Prevention etc). I refer to the matters detailed in the Final Report of the Royal Commission into Defence and Veteran Suicide⁶, and within the IGADF Inquiry (DAAI Inquiry 110187 - IGADF 102/21).

Immediate reforms are needed to strengthen verification protocols and establish stricter accountability measures in the administrative inquiry process.⁷ The ADF military justice system critically fails to serve ADF members by undermining the fundamental principles of fairness and accountability. When service members raise legitimate grievances, they face a deeply flawed process: Defence Commanders and Defence Ministers typically receive incomplete or inaccurate information relating to investigations that systematically exclude crucial evidence, and even proven cases often result in inadequate resolution.

Most concerning, the ADF lacks a formal framework for remedial action, leaving affected personnel without proper recourse to address both professional and financial damages. This systemic failure not only betrays the trust of our service members but also undermines the integrity of the institution they serve.

Legal Framework: Protecting ADF Members from Intimidation

Under the *Defence Force Discipline Act 1982 (Cth)* and related regulations, ADF members are entitled to legal protections when reporting misconduct. However, research I and other academics have conducted over many years suggests a concerning pattern of retaliatory behaviour against complainants, including explicit career threats, implied physical harm, and attempts to silence legitimate grievances.⁸ These intimidation tactics not only undermine the integrity of the military justice system but also violate *Section 58 of the Defence Force Discipline Act*, which prohibits prejudicial conduct, as well as the fundamental principles of fairness and duty of care that should be cornerstones of military leadership. Such systemic failures in protecting whistleblowers and handling complaints properly can lead to decreased morale, erosion of trust, and potentially compromise operational effectiveness.

A critical flaw lies in the confidential nature of fact-finding and administrative inquiries, which appears to contravene principles of procedural fairness established in administrative law. Complainants are denied access to the very evidence used to assess their cases, potentially violating their rights under *the Administrative Decisions (Judicial Review) Act 1977*. This lack of transparency not only undermines the principles of natural justice but also potentially perpetuates a culture of institutional silence.

⁶ Volume 3, Military Sexual Violence, Unacceptable Behaviour, and military justice. Part 3, Misconduct, complaints and military justice (Chapters 8 to 10); and Part 4, Governance and accountability (Chapters 11 to 13). Retrieved <https://defenceveteransuicide.royalcommission.gov.au/publications/final-report>

⁷ Kay Danes and Glenn Kolomeitz, (2021). Submission to the Royal Commission Defence and Veteran Suicide 2021, GAP Veteran & Legal Services, (18 November 2021). ([Download](#))

⁸ Uniformed Justice Campaign at the Website: Defence Lives Matter. Retrieved <https://www.defencelivesmatter.com/uniformjustice>

Furthermore, these inquiries often fail to fulfil their obligation under Defence policy and the *Criminal Code Act 1995 (Cth)* to refer potential criminal matters to appropriate investigative authorities, creating a troubling gap in the system's ability to address serious misconduct. This systematic failure to properly escalate criminal matters effectively shields perpetrators while leaving victims without recourse to justice.

In summary, the weaponisation of the ADF's military justice system against its members represents a grave betrayal of trust and duty, potentially violating both military and civilian law. Through systematic exclusion of evidence, selective briefing practices, and intimidation tactics that may constitute offences under various Commonwealth statutes, the system appears designed to silence rather than serve justice. When combined with the deliberate obstruction of transparency, conflicts of interest, and failure to properly escalate criminal matters as required by law, these practices create a toxic environment that protects institutional interests at the expense of service members' legal rights.

This perversion of military justice not only damages individual careers and lives but also undermines the fundamental values of integrity and fairness that should be the hallmark of our defence forces. Urgent legislative and policy reform is needed to transform this system from an instrument of institutional protection into one that truly serves and protects those who serve our nation.

3. Which military justice system processes are most susceptible to abuse?

This section discusses vulnerabilities in the Australian military justice system, particularly focusing on the Inquiry Officer Inquiry (IOI) process and the Inspector General of the Australian Defence Force (IGADF). The text details several key issues:

- The limitations of the IOI system, including procedural fairness issues, confirmation bias risks, and lack of independence,
- Problems with the IGADF's effectiveness, notably its inability to enforce recommendations and lack of true independence from ADF command, and
- The impact on service members, including potential re-traumatisation and career repercussions for those who file complaints.

The section concludes by advocating for comprehensive reform of the Defence (Inquiry) Regulations and suggests establishing an independent external review mechanism.

It is broadly accepted in the ADF Community that the Inquiry Officer Inquiry (IOI) as a military justice system currently operates as an inquisitorial system under the *Defence (Inquiry) Regulations 2018* and requires urgent reform. Common failings of this system have been widely documented and represent significant concerns for the administration of military justice. These systemic issues typically include:

- Limited procedural fairness safeguards compared to adversarial systems, which can result in reduced transparency and compromised decision-making processes,

- Risk of confirmation bias due to the investigating officer both gathering and evaluating evidence, potentially leading to predetermined conclusions and incomplete consideration of alternative explanations,
- Potential lack of independence since the inquiry officer is often from within the same organisation, which may create conflicts of interest and affect the impartiality of investigations,
- Time constraints that may impact thoroughness of investigations, potentially resulting in rushed conclusions and overlooked evidence or witness statements,
- Restricted rights of affected persons to test evidence or cross-examine witnesses, which limits their ability to properly defend their interests or challenge potentially incorrect information,
- Limited appeal mechanisms for challenging findings, making it difficult for affected parties to seek review of decisions they believe to be incorrect or procedurally unfair,
- Deference given to an Inquiry Officer's findings based on their position rather than merit, which can entrench incorrect conclusions and compound the detriment to complainants seeking justice.

An ADF member may have the right to raise matters with the IGADF in the hope of accessing an impartial and independent review of their matters, though not all matters may qualify for a formal inquiry. There is a perception among the ADF and Veteran community that although the IGADF sits outside of the ADF chain of command, the process of an IGADF administrative inquiry is not nearly *independent* enough from the ADF command. This contributes to the broadly held perception that the IGADF is not able to influence a fair and supportive mechanism by which ADF members and Veterans can be heard.

The IGADF reports his findings to the CDF. The Department of Defence, the ADF and the IGADF all fall within the one Defence portfolio and draw from the same funding pool. The IGADF is staffed primarily by serving and Reserve ADF officers who retain their commissions, while the remainder are drawn from the Defence Department. Senior APS staff in the Defence Department hold rank-equivalents.⁹

Concerns among stakeholders prevail about the *reliability* of the IGADF to appropriately safeguard the military justice system.¹⁰ Namely because the IGADF's only authority is to make *recommendations*, *not enforce* those recommendations.

Currently there is no legal requirement for the ADF service Chiefs or Chief of Defence Force to *act* on IGADF recommendations. This is a significant observation about governance and accountability in the ADF. The lack of a legal obligation to implement IGADF recommendations could potentially limit the effectiveness of the oversight process. While service Chiefs and the Chief of Defence Force may still choose to act on recommendations, as a matter of good practice

⁹ Hugh Poate (2023), 'Submission to the Hon Duncan Kerr SC,'*IGADF 20-year review*, 19 October 2023 [P4].

¹⁰ GAP Veteran & Legal Services (2021), 'Submission to Senate Foreign Affairs, Defence and Trade Legislation Committee *Inquiry into the provisions of the Defence Legislation Amendment (Discipline Reform) Bill 2021*, 30 September 2021, p. 3.

and governance, the absence of a legal requirement means there is no formal enforcement mechanism.

This discretionary approach to implementing recommendations could have implications for:

- Accountability and transparency in addressing identified issues,
- The overall effectiveness of the IGADF's oversight role, and
- Implementation rates of important reforms or improvements.

Based on the context, this discretionary implementation approach could significantly impact complainants in several ways:

- Without a legal requirement to act on IGADF recommendations, there is no guarantee that complaints will lead to actual changes or reforms, even if the IGADF finds merit in them,
- The lack of a formal enforcement mechanism means complainants have no assurance that their concerns will be addressed, even after going through the oversight process. This could affect accountability and transparency in how their complaints are handled, and
- The effectiveness of the entire complaint resolution process could be compromised since implementation of recommendations is purely discretionary.

The 'weaponisation' potential emerges when the system's lack of mandatory action becomes a tool for institutional harm. When validated complaints are ignored, it creates a cycle where:

- The psychological distress and trauma of complainants is amplified by institutional inaction,
- The system itself becomes a mechanism of re-traumatisation, particularly for victims of serious incidents, and
- The erosion of trust and feelings of betrayal can be weaponised against complainants, leaving them feeling powerless within the system.

This effectively turns the complaint process itself into an instrument that can cause additional harm to those seeking justice or reform. Successive reviews of the military justice system have consistently produced the same critical recommendations, yet these remain largely unimplemented or only partially executed, with reforms systematically prioritising institutional interests of the ADF over the welfare and rights of individual service members.¹¹ Based on the unimplemented or partially executed reforms, ADF members and their families can face several significant impacts:

- Limited access to fair complaint resolution processes and justice mechanisms,
- Reduced protection of individual rights and welfare when issues arise during service,
- Potential emotional and psychological stress from having to navigate a system that prioritises institutional interests over personal wellbeing,

¹¹¹¹ Appendix 3 - Recommendations taken from the Commonwealth Ombudsman's report Australian Defence Force: Management of complaints about unacceptable behaviour, June 2007, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed_inquiries/2008-10/legmiljustice/report03/e03

- Decreased confidence in the military justice system's ability to address their concerns effectively, and
- Possible reluctance to report issues or seek help due to perceived institutional bias.

This further raise concerns regarding:

- unclear accountability of decision makers,
- the delivery of delayed and irrational outcomes, and
- the disproportionate investigative effort compared to the nature of the decisions to be made and to manage and resolve an incident or complaint.

Current *management outcomes* in the ADF are not reducing the risk of legal claims against the ADF by its members. Previous IGADF reports have found that most complainants who give feedback about the Defence administrative inquiry process consistently argue that inquiries are '*unfair and unsupportive*' and that the '*ADF culture, in their experience, still makes it difficult for victims to come forward and to receive justice without fear of career or reputational impairment.*'¹²

Yet nothing changes!

Evidence submitted to the Royal Commission into Defence and Veteran Suicide in 2021 upheld that victims of military justice were:

...often ostracised from their peers for reporting the abuse and suffered retribution in the form of limited deployments and promotions because the victims were seen as "the problem" for making an official complaint.¹³

Government reviews have also found issues with Defence's management of complaints, including '*failings in the application of administrative and judicial processes.*'¹⁴ While it is agreed that the ADF must retain its autonomy in matters of security and operations, it is argued that Defence needs to improve its handling of workplace grievances. This is to ensure that ADF members are afforded the same rights to a fair and effective resolution as any other Australian in society or any other organisation. This is a point also upheld by previous ADF commanders and government officials:

...the ADF is not separate from the community, nor should it be, and that it needs to at all times abide by the same standards of accountability as every other Australian organisation.¹⁵

"I want the Australian Defence Force to be recognised as an employer of choice: a fair, just and inclusive organisation that sets the benchmark for other employers"—Former Chief of the Defence Force (CDF) and Governor General David Hurley.¹⁶

¹²Australian Government (2023), 'Inspector General of the Australian Defence Force Inquiry Report – Implementation of Military Justice Arrangements for dealing with Sexual Misconduct in the Australian Defence Force', (23) Retrieved from <https://www.defence.gov.au/sites/default/files/2022-03/IGADF-Report.pdf>.

¹³ "Interim Report, Royal Commission into Defence and Veteran Suicide," (20 Aug 2022), https://defenceveteransuicide.royalcommission.gov.au/system/files/2022-08/interim_report.pdf.

¹⁴ Ibid, p25.

¹⁵ Jack Snape (19 Nov 2020), 'Accountability to be focus of response to 'appalling' behaviour in Afghanistan war crimes report, Defence Minister says'. Retrieved from <https://www.abc.net.au/news/2020-11-19/afghanistan-war-crimes-report-linda-reynolds-defence-force/12899702>.

¹⁶ Department of Defence, (2013) Gender in Defence and Security Leadership Conference. Defence News. <http://news.defence.gov.au/media/stories/gender-defence-and-security-leadership-conference>

To achieve meaningful military justice reform, a comprehensive review of the Defence (Inquiry) Regulations is imperative. These regulations, while intended to ensure procedural fairness, have inadvertently created systemic barriers to justice. The current framework fails to adequately address the power imbalances inherent in military hierarchies, potentially compromising the integrity of investigations and disciplinary proceedings. By critically examining and reforming these policies, we can better safeguard the rights of service members while maintaining operational effectiveness.

Several pieces of Australian legislation also support fair workplace grievance resolution:

- **Fair Work Act 2009:** Provides the framework for workplace rights and grievance resolution processes that apply to most Australian workplaces,
- **Work Health and Safety Act 2011:** Ensures rights to a safe workplace and mechanisms for addressing safety-related concerns,
- **Australian Human Rights Commission Act 1986:** Protects against discrimination and provides avenues for complaint resolution,
- **Defence Act 1903:** While establishing the ADF's special status, it still requires compliance with broader Australian workplace laws where applicable,
- **Public Governance, Performance and Accountability Act 2013:** Sets standards for accountability in Commonwealth entities, including Defence.

This legal framework aligns with the ADF's acknowledged position that it *should* maintain the same standards of accountability as other Australian organisations. Arguably, however, Commissioner Nick Kaldas expressed serious concerns about the ADF's workforce management during the Royal Commission into Defence and Veteran suicide, and Defence's genuine commitment to meaningful change.

"All of this raises serious questions as to whether defence is committed to making change in the best interests of its members or whether they're just going through the motions."¹⁷

Commissioner Kaldas also highlighted the severe impact on veterans and their families, who sometimes face years-long delays in claims processing, leading to devastating consequences.

¹⁷ Duncan Evans, 2023. Veteran suicide royal commission chair Nick Kaldas calls on defence to 'get on-board.' The Australian. (13 Sep 2023), <https://www.theaustralian.com.au/breaking-news/veteran-suicide-royal-commission-chair-nick-kaldas-calls-on-defence-to-get-on-board/news-story/c1c5eb07a867e339ebb3c9dd647563b8>

Accountability and Natural Justice in Defence Reviews

The cornerstone of administrative law mandates that natural justice must be upheld in all decision-making processes.¹⁸ This fundamental legal principle encompasses two critical elements:

- The right to an unbiased hearing (*nemo iudex in causa sua*), established in Australian administrative law.¹⁹
- The right to be heard (*audi alteram partem*), ensuring procedural fairness.²⁰

The principle of natural justice, as repeatedly affirmed by the High Court of Australia, requires that justice must not only be done but *must be seen to be done*.²¹ This raises significant issues with the ADF's current internal dispute resolution framework, which lacks independent oversight and effectively allows Defence to self-adjudicate complaints. Though the Defence Force maintains various internal resolution processes including:

- Unit-level informal resolution through the chain of command,
- Administrative Inquiry Officers appointed for formal investigations,
- Military Police investigations for disciplinary matters, and
- Quick Assessment officers for initial incident reviews.

Many in the ADF community feel that this self-regulated internal resolution structure has the potential to raise issues with natural justice principles, particularly regarding institutional bias and the fundamental right to an unbiased hearing. The IGADF's statutory obligations under the *IGADF Regulation 2016* require it to ensure the highest standards of administrative fairness.²²

This presents not merely an opportunity but a legal imperative to implement comprehensive workplace reforms. Such reforms should address systemic inequities that not only lead to personal injury but also potentially breach administrative law principles regarding procedural fairness.²³ To ensure compliance with administrative law requirements, it has always been my belief that an independent external review mechanism be established. Such that could comprise of non-uniformed personnel operating under strict procedural fairness principles and who possess expertise in human resource management and conflict resolution. Such a system would have the potential to strengthen the right to a fair hearing and eliminate potential bias—addressing key deficiencies in the current framework.²⁴

¹⁸ *Kioa v West* [1985] HCA 81, <https://jade.io/article/67326>.

¹⁹ *Ibid.*

²⁰ *Plaintiff S157/2002 v Commonwealth* [2003] HCA 2, <https://jade.io/article/67183>.

²¹ *Kioa v West* [1985] HCA 81, <https://jade.io/article/67326>.

²² *IGADF Regulation 2016*, s 10, <https://www.legislation.gov.au/Details/F2016L01312>.

²³ *Plaintiff S157/2002 v Commonwealth* [2003] HCA 2, <https://jade.io/article/68183>.

²⁴ *Ainsworth v Criminal Justice Commission* [1992] HCA 10, <https://jade.io/article/67726>.

4. What are the key reasons and causes for such behaviour and actions?

This section discusses the challenges within the ADF's investigative processes and legal frameworks. It examines three key areas: the structural limitations of Defence Inquiry Officers within command structures, the Australian legal framework for personal liability in cases of non-compliance, and the specific context of ADF workplace regulations. The discussion highlights the disconnect between existing legal frameworks and actual accountability practices, concluding with recommendations for maintaining equal accountability to foster a safer workplace environment.

Defence Inquiry Officers face a critical challenge: operating within command structures that can fundamentally undermine their investigative independence. This systemic vulnerability manifests in three concerning areas:

- severely restricted external oversight and accountability,
- direct command influence that can shape or constrain investigations, and
- absence of robust safeguards against procedural bias.

These structural flaws strike at the heart of military justice, threatening not just individual investigations but the ADF's entire commitment to fair and impartial inquiry. The consequences are already evident: routine administrative matters frequently spiral into resource-intensive investigations, demanding heightened evidentiary standards and substantial financial investment. Without mandatory elevated procedures, some Defence Inquiry Officers conduct investigations that fall short of professional standards. While the "balance of probabilities" approach may suffice for basic administrative matters, complex cases demand more rigorous protocols—specifically, sworn testimony and comprehensive documentary evidence.

Only through implementing these enhanced measures can the ADF truly fulfill its mandate for accountability and transparency in its inquiry processes.²⁵

The Australian legal framework for personal liability in cases of non-compliance with government mandates is grounded in common law principles and statutory obligations:

- The Civil Liability Acts in various Australian states establish statutory duties and standards of care that individuals must meet,
- Australian tort law recognises a duty of care principle where individuals must take reasonable precautions to avoid foreseeable harm to others,
- The High Court of Australia has established precedents supporting liability for breaches of statutory duties that cause harm,
- Australian courts apply the "but for" test to establish causation between non-compliance and resulting damages, and

²⁵ The Hon Len Robert-Smith QC (2014), 'Restorative engagement—A new approach.' *The Arbitrator & Mediator*. September 2014. Retrieved from <https://www.austlii.edu.au/au/journals/ANZRIArbMedr/2014/5.pdf>.

- Commonwealth and state legislation provides statutory authority for civil penalties when individuals breach public health and safety regulations.

Under Australian military law and workplace regulations, ADF members who knowingly and maliciously violate workplace conduct policies should be held personally liable for harm caused to fellow service members but rarely face direct accountability. This disconnect between policy and practice is evident despite existing legal frameworks:

- The Defence Force Discipline Act 1982 establishes standards of conduct and accountability for ADF personnel,
- Work Health and Safety Act 2011 imposes duty of care obligations on all workplace participants,
- Personal liability aligns with established principles of command responsibility and workplace safety,
- Current military justice systems recognise individual accountability for misconduct, and
- Legal precedents support holding individuals responsible for malicious workplace violations.

In concluding this point, maintaining equal accountability in the workplace is essential for fostering a safe and respectful environment. When malicious conduct breaches the duty of care between service members, personal liability serves as a crucial deterrent against misconduct and harassment. By ensuring victims have proper legal recourse and eliminating exemptions from liability, we can prevent toxic leadership, strengthen unit cohesion, and create a workplace culture built on trust and mutual respect.

5. What mechanisms exist for identifying potential abuse of the military justice system and for holding commanders to account who are found to abuse military justice processes and whether these mechanisms are effective?

This section discusses the ineffectiveness of oversight mechanisms in the ADF military justice system. Specifically, it covers:

- Existing oversight bodies (Defence Ombudsman, IGADF, Defence Minister, DVA) and their failure to provide meaningful accountability,
- Structural flaws in the system, including conflicts of interest with IGADF investigators and lack of enforcement power,
- Legal and human rights implications, including potential breaches of domestic laws and international conventions, and
- The human impact, including the lack of effective appeals processes and the connection to veteran suicide rates.

The Royal Commission's findings highlight widespread issues of commander abuse of power and lack of transparency, with over 5,000 submissions documenting neglect and cover-ups, yet no accountability has been achieved.

The ADF's external oversight system is fundamentally broken.

While formal oversight mechanisms exist—including the Defence Ombudsman, IGADF, Defence Minister, and DVA—the Royal Commission has exposed their critical failure to provide meaningful accountability.²⁶ These oversight bodies consistently demonstrate alarming patterns of alignment with ADF decisions, even in cases where evidence clearly indicates violations of Defence policy and military justice standards.

The Royal Commission's findings reveal a disturbing picture of commanders abusing discretionary powers, operating without transparency, and bypassing risk management frameworks. This point is considered by former Queensland Senator Gerard Rennick who said:

“The devastating impact is clear: over 5,000 submissions to the Royal Commission into Defence and Veteran Suicide document widespread neglect, abuse, and cover-ups. Yet despite this overwhelming evidence, not a single person has been held accountable.”²⁷

Structural Flaws

The IGADF exemplifies the deep-rooted problems in the current system. Though statutorily positioned outside the Chain of Command, its credibility is compromised by its heavy reliance on former ADF Officers as investigators—creating obvious conflicts of interest that independent research has confirmed. Most alarmingly, external oversight bodies lack any real enforcement power. The ADF's autonomous governance structure reduces these oversight mechanisms to mere advisory roles, which the ADF routinely disregards. This fundamentally undermines any possibility of implementing meaningful reform or accountability measures.

Legal and Human Rights Implications

The Australian Defence Force's practices present substantial legal risks under domestic law. Specifically, the organisation may be in breach of:

- Administrative Law: Non-compliance with procedural fairness requirements and natural justice principles,
- Civil Law: Potential negligence claims regarding duty of care obligations,
- Work Health and Safety Act: Failures to ensure psychological safety and prevent foreseeable harm, and
- Veterans' Entitlements Act: Statutory obligations regarding veteran welfare and support.

²⁶ Royal Commission into Defence and Veteran Suicide, Final Report 2024. Retrieved <https://defenceveteransuicide.royalcommission.gov.au/publications/final-report>

²⁷ John Armfield, 2025. *Facebook*. 30 April 2025. Retrieved <https://www.facebook.com/share/p/16UU5k7NxX/>

From a human rights perspective, some current practices may also offer a challenge to:

- International Covenant on Civil and Political Rights (ICCPR): Article 14 right to fair hearing,
- UN Basic Principles on the Role of Lawyers: Right to effective legal representation, and
- Convention against Torture: Protection against cruel, inhuman or degrading treatment.

These issues expose the ADF to potential scrutiny from both domestic courts and international human rights bodies, particularly given Australia's ratification of relevant treaties and its obligations to protect servicemembers' fundamental rights.

Human Cost

The consequences for ADF personnel are severe. Without an effective independent appeals process or comprehensive reparation policy, members whose claims are dismissed have no way to restore their damaged reputations or address deteriorating mental health. Many are forced to seek justice through costly civil proceedings.

Protected by powerful vested interests, ADF leadership and government officials perpetuate this morally bankrupt system by actively resisting reform. Their failure to implement accessible mediation processes and ensure fair resource allocation represents a serious breach of duty of care. The ripple effects extend far beyond active service, with unresolved grievances contributing to tragic rates of veteran suicide and self-harm. This crisis demands immediate action: we must establish comprehensive lifetime support systems and eliminate the policy barriers preventing genuine administrative reform.

6. How any abuses might be minimised or eliminated?

This section discusses issues with the ADF arbitration system and proposed solutions to minimise abuses. The current system has several problems:

- It often worsens grievances instead of resolving them,
- There's a power imbalance in legal representation, and
- The Complaints Resolution Agency has limited independence due to chain of command requirements.

The text proposes implementing an Alternative Dispute Resolution (ADR) system that would:

- Establish non-uniformed ADR practitioners as neutral mediators,
- Focus on early intervention and prevention, and
- Provide a more balanced and fair resolution process.

This new system would work alongside existing formal military justice processes rather than replace them.

Recent administrative law principles and judicial decisions suggest that implementing more robust arbitration processes, aligned with principles of natural justice and procedural fairness, could effectively address grievances by ensuring:

- comprehensive acknowledgment and rectification of administrative errors,
- formal acknowledgment of responsibility through appropriate remedial measures, and
- implementation of restorative justice principles to return the complainant to their rightful position, consistent with established administrative law remedies.

The current ADF arbitration system, contrary to principles established in administrative law jurisprudence, often exacerbates rather than resolves grievances. This systemic failure has documented adverse effects on ADF members' psychological wellbeing and family dynamics. Legal scholars and workplace reform advocates highlight significant procedural fairness concerns in the Defence arbitration process.

While the Complaints Resolution Agency (CRA) is empowered to conduct administrative reviews, its jurisdiction is limited by the requirement for prior chain of command involvement, potentially compromising its independence and effectiveness. Broad legal analysis suggests that Defence, paralleling the Department of Veteran Affairs' approach, allocates substantial resources to retain premier legal counsel for contesting compensation claims. This creates a significant power imbalance, as ADF members typically lack access to comparable legal representation.

Consequently, ADF members face systematic disadvantages within an internal *resolution* framework resistant to reform, compelling many to seek redress through external channels, including media exposure.²⁸ Extensive research by parliamentary committees, government bodies, academic institutions, and legal experts has identified several key administrative deficiencies:

- inherent conflicts of interest within command structures,
- institutional culture impeding transparent reporting mechanisms,
- systemic organisational blind spots,
- insufficient whistleblower protections,
- inadequate alternative dispute resolution frameworks, and
- regulatory frameworks lacking robust enforcement mechanisms for ensuring procedural fairness, independence, and good faith administration.²⁹

Furthermore, documented evidence indicates that Defence administrative inquiries lack sufficient safeguards against perjury and misrepresentation, with limited scope for challenging adverse findings even in cases of procedural impropriety.³⁰

²⁸ Ainslie Drewitt-Smith (2019), 'Lawyers call for reform of ADF's discriminatory unreasonable internal legal system,' ABC News, Retrieved <https://www.abc.net.au/news/2019-10-01/veteran-claims-defence-legal-system-unfair/11509652>.

²⁹ Australian Government (2007), 'Chapter 3—Disciplinary investigations,' Retrieved from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed%20inquiries/2004-07/miljustice/report/c03.

³⁰ Australian Senate Report (2019), 'Report on Military Justice Procedures in the Australian Defence Force, Chapter 5, Administrative Action,' Retrieved from https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jfadt/military/mj_ch_5.htm.

A solutions-based approach—Alternative Dispute Resolution

Drawing from established legal frameworks and best practices in administrative law, the ADF should implement comprehensive *alternative dispute resolution* mechanisms that:

- Facilitate early intervention at the unit level to prevent escalation of disputes,
- Minimise exposure to external litigation and media scrutiny,
- Enhance workplace safety and wellbeing through preventive measures,
- Institute evidence-based mediation protocols; and
- Implement comprehensive risk management strategies for mental health concerns.

To align with contemporary legal standards and best practices, the ADF should establish a *non-uniformed ADR Practitioner Service* staffed by *neutral third-party mediators* who possess *recognised qualifications and expertise* in dispute resolution. These practitioners should demonstrate substantial *experience and knowledge* in employment law, industrial relations, and fair work legislation, while maintaining operational independence from the command structure.³¹ These *Practitioners* would represent a significant advancement in the ADF's current dispute resolution framework, introducing a transformative 'non-adjudicatory' approach consistent with modern legal principles.³² Practitioners would operate according to four fundamental legal principles:

1. Disputant autonomy in decision-making processes,
2. Facilitation of meaningful dialogue and mutual understanding,
3. Resolution based on legitimate interests and needs of parties, and
4. Emphasis on early intervention and localised dispute resolution.³³

It is my belief that there will always be a need to direct some of the more complex military justice matters through the chain of command and to the IGADF, as required in disciplinary procedures (e.g., Defence Force Discipline Act 1982). My suggestion to incorporate an Alternative Dispute Resolution process does not seek to replace those formal processes. Rather, to present an alternative approach to the way grievances are currently managed in the ADF, given that the current approach is not working well enough.

³¹ This is a different mechanism from the Directorate of Soldier Career Management and Directorate of Officer Career Management which deals with career management in terms of promotions, transfers, postings, transitions etc... These do not manage complaints and resolutions within the ADF.

³² The accreditation process to becoming an *ADR Practitioner* is a standard practice across Australia where applicants meet threshold training, education, and specific assessment requirements as part of the National Mediator Accreditation System.

³³ Victorian Public Sector Commission (2022), 'Alternative Dispute Resolution,' Chapter 2.2, Retrieved from <https://vpssc.vic.gov.au/workforce-capability-leadership-and-management/managing-negative-behaviours/developing-conflict-resilient-workplaces/guide-2-the-conflict-resilient-workplace/#heading3>.

Final Thoughts

I believe a more responsive approach to mediate disputes in the ADF workplace is needed. Such an approach should take into consideration the trauma inflicted on ADF members and Veterans who are subjected to administrative inquiries. This is sensible. By influencing the engagement of a more trauma-informed, alternative dispute resolution service, the IGADF could better serve ADF members and Veterans by ensuring they have access to:

- non-adversarial-win-win solutions and avoid costly litigation,
- more stable outcomes based on fair and equitable decisions,
- more responsive support mechanisms at the point of initial exposure to a workplace detriment, to mitigate harm before matters are escalated through the chain of command,
- a policy that does what it claims to do—focus on resolving the issue(s) at the earliest opportunity and at the lowest appropriate level,³⁴ and
- access an arbitration process that has executive power to remedy flawed decisions made by the ADF, and to ensure accountability.

If the saying is true, then an ounce of prevention is surely worth a pound of cure!³⁵

Fundamental reform of the ADF military justice system is imperative. The current system's vulnerabilities have enabled its misuse against both service members and civilians, undermining its core purpose of ensuring fair and equitable justice. Therefore, the IGADF must not simply recommend robust safeguards and oversight mechanisms but insist on reforms to restore integrity, transparency, and confidence in the military justice process. Only through comprehensive reform can the ADF establish a military justice system that upholds the principles of procedural fairness while protecting the rights and welfare of all parties involved.

³⁴Australian Government (2023), 'Complaints and Resolution', Retrieved from <https://www.defence.gov.au/about/complaints-incident-reporting/complaints-resolution> .

³⁵Parliament of Australia.(2004-07), 'Chapter 8—The administrative system—investigations.' Parliamentary Business. Retrieved from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed%20inquiries/2004-07/miljustice/report/c08.

SECTION 2 CASE STUDY

This case study, referenced in the introduction, demonstrates how Chain of Command personnel abused the military justice system, causing unwarranted harm to an ADF member and their spouse. Since 2012, both have endured severe indignities from this misuse of military justice. The impact is representative of egregious violations of Commonwealth law and ADF regulations within the ADF's military justice system. Beyond the legal breaches, the systematic betrayal of trust and values by the institution inflicted severe psychological trauma - a form of moral injury.³⁶ Both parties have suffered professional and personal injury, including psychological harm, professional damage, and reputational injury from defamatory actions. Despite evidence of procedural failures, poor administration, and misconduct, no remedial or compensatory measures have been taken, violating principles of administrative law and natural justice. This situation requires immediate restorative action through:

- A formal apology to restore professional and reputational standing, acknowledging the documented abuse of the military justice system and its impact on both the ADF member and their spouse.
- Financial compensation to address both the direct financial losses and career impacts experienced by both parties.
- Direct action to address and correct defamatory statements, including formal retractions where appropriate, to help repair the reputational damage.

These measures would address the documented psychological harm, professional damage, and violations of administrative law and natural justice that have occurred since 2012. This case study is divided into two parts: Part A examines the affected ADF member, while Part B focuses on the affected ADF spouse. Each section begins with a brief outline before providing a detailed analysis. These matters were presented to the Royal Commission into Defence and Veteran Suicide, without consideration.³⁷

Here are the key findings from both case studies:

Part A - ADF Member Case:

- A 47-year Special Forces veteran with exemplary service record faced deliberate career sabotage and false allegations,
- Suffered \$1.45 million in lost salary/pension benefits due to administrative misconduct,
- Multiple procedural failures including withheld Performance Appraisal Reports and false allegations about mishandling funds,
- Despite evidence disproving allegations, no remedial action was taken.

³⁶ Luke Bellman, (2024). Aiding healing from moral injury. Australian Government. Retrieved <https://www.defence.gov.au/news-events/news/2024-01-26/aiding-healing-moral-injury#:~:text=The%20ADF%20defines%20moral%20injury%20as%20a%20trauma-related,individual%E2%80%99s%20deeply%20held%20moral%20beliefs%20and%20For%20ethical%20standards>

³⁷ Kay Danes and Glenn Kolomeitz, (2021). Submission to the Royal Commission Defence and Veteran Suicide 2021, GAP Veteran & Legal Services, (18 November 2021). https://www.defencelivesmatter.com/_files/ugd/c5f951_8170812bc3234855ba3acf0710e64cdc.pdf

Part B - ADF Spouse Case:

- Unauthorized inclusion of spouse-related matters in ADF member's Performance Appraisal Report, violating Defense Policy,
- Denied natural justice and opportunity to respond to allegations,
- Case highlights systemic failures in protecting civilian rights in military administrative processes.

Implications:

- Demonstrates critical failures in military justice system and administrative processes,
- Highlights need for reform in handling both service member and military spouse cases,
- Reveals gaps in civilian protection within military administrative procedures.

A Summary of PART A—an affected ADF member

The ADF member

The ADF member served the ADF for 47 years, primarily in the Australian Special Forces. They played a key role in initiating various world-class training and capability solutions to enhance Australia's Special Operations capacity. The ADF member maintained an exemplary service record. The ADF member was subjected to critical failures:

Deliberate Career Sabotage:

- A superior officer intentionally withheld mandatory Performance Appraisal Reports (PARs) for 2012-2013, violating Defence Policy DI (A) PERS 116-16, the Public Service Act 1999, and compromising principles of procedural fairness under administrative law.
- Other ADF officers made false allegations to deliberately harm the ADF member in the workplace. The detriment resulted in a significant financial impact to the ADF member - \$1.45 million in lost salary and pension benefits.

Procedural Misconduct:

- The Inquiry Officer's four-year investigation was compromised by:
 - Failing to disclose critical information to the ADF member, breaching natural justice principles,
 - Ignoring evidence of deliberate career sabotage, contrary to investigative obligations under Defence (Inquiry) Regulations, and
 - Allowing demonstrably false allegations to influence the outcome, violating administrative decision-making standards.

Administrative Violations:

- Against policy, misuse of Army Regulations against the ADF member.
 - The Directorate of Soldier Career Management - Army (DSCM-A) presented incomplete records to the Senior Warrant Officer Personnel Advisory Committee (SWO PAC),
 - Evidence of predetermined outcomes and bias in the inquiry process. The ADF member's ranking dropped from top 1/3 to bottom 1/3 of their cohort and triggered unnecessary early retirement Management Initiated Early Retirement (MIER) notification.
- The cumulative effect of these actions constituted significant administrative deficiency with demonstrable personal, professional, and financial impacts on the ADF member.
- No remedial action despite proven deliberate misconduct,
- No restoration of professional status or reputation, and
- The ADF member was blamed for his superior's policy violations.

Missed Intervention Opportunity:

- Alternative dispute resolution not utilised,
- Lack of corrective action or reparation, and
- Continued detriment to member and their spouse.

Key points about the detriment to the ADF member's career:

- Initially discriminated against by being presented to the March 2014 SWO PAC without complete performance reports (PARs) for 2012-2013,
- Defence acknowledged this discrimination and ordered corrective action through presentation to the 2016 SWO PAC,
- However, the 2016 SWO PAC included the same personnel from the 2014 PAC,
- The ADF member was then excluded from a Special Forces position based on undocumented personal assessments rather than factual evidence, and
- Despite these findings of discrimination, no remedial action was taken to address the career impact.

Key points of legal violations relating to SWO PAC process

Procedural Fairness Violations:

- Lack of impartiality in the 2016 SWO PAC process - same personnel involved in previous negative decisions, suggesting predetermined outcomes,
- Denial of natural justice - false allegations made without giving the ADF member an opportunity to respond,
- Policy violations regarding Performance Assessment Reports (PARs):
 - Written four years late without the ADF member offered consultation (against policy),
 - Included adverse comments without allowing defence, and
 - Contained unauthorised (false) comments about the ADF member and their spouse.

Note: Allowing unauthorised and false comments about the ADF member's spouse during an inquiry could have several serious legal and procedural impacts:

- It compromises the integrity and fairness of the inquiry process, potentially violating administrative law principles,
- It could lead to biased or incorrect conclusions, breaching natural justice requirements,
- It may cause emotional distress to both the ADF member and their spouse, potentially leading to civil claims,
- It could expose the inquiry to judicial review on grounds of procedural unfairness,
- It violates professional standards, procedural fairness principles, and potentially defamation laws,
- It may breach privacy and confidentiality obligations under relevant legislation, and
- It could constitute maladministration under oversight body guidelines.

Administrative Law Principles:

The decision-making process appears to have violated several key administrative law principles:

- **Procedural fairness:** The decision was unreasonable as no rational person with all facts could have reached the same conclusion. The Defence Legal Officer confirmed significant adverse allegations were made to the Inquiry Officer but never presented to the ADF member for response. This directly violated ADF Policy requiring procedural fairness in administrative decision-making.
- **Evidence-based decision making:** The determination ignored the ADF member's exemplary service record.
- **Due diligence:** Failed to properly investigate readily available evidence including timelines and trust records
- **Bias and conflict of interest in selection processes,**
- **Lack of independent assessment, and**
- **Defective administration in handling of personnel records.**

Outcome:

- While the ADF member successfully challenged the Management Initiated Early Retirement (MIER), they were demoted to a non-designated position until reaching Compulsory Retirement Age (CRA),
- Career progression opportunities were effectively terminated through maladministration and misfeasance.

The claim of misfeasance and maladministration centres around an Inquiry Officer Investigation where:

A senior ADF officer made false (scandalous) statements about the ADF member during a 2014 SWO PAC. These allegations included:

- Mishandling \$7-10 million in fundraising for SAS Resources Trust (established for soldiers killed in service),
- Making unauthorised promises about deployment qualifications to soldiers, and
- Misusing Defence resources for unauthorised Mess projects.

In the investigation of these matters, the Inquiry Officer failed to follow proper administrative procedures by:

- Concealing critical allegations from the ADF member,
- Denying the ADF member's right to defend themselves against these false allegations, and
- Not conducting due diligence (such as auditing funds) to verify fraud allegations.

False Allegations:

Had the ADF member been informed of the false allegations, and evidence been tested, the allegations could have been proven to be false through:

- Employment records showing legitimate promotional postings,
- Absence of any disciplinary or counselling records. The ADF member's promotions to Squadron Sergeant Major positions, senior roles in multiple military deployments, diplomatic appointments, and maintenance of Top-Secret Positive Vetting clearance would have also demonstrated a pattern of trust and competence that contradicts the false allegations.
- Evidence that the ADF member used personal funds for the Mess improvements. The ADF member did not have access to Defence accounts.
- Recognition through an ADF Commendation awarded to the ADF member for the project they initiated, and
- Confirmation from SAS Resources Trustee refuting the fraud claims. The establishment date of the SAS Resources Trust (after the 1996 Blackhawk accident) provides crucial timeline evidence that disproves the fraud allegations. This could have been considered exculpatory evidence in any legal proceeding.

Moral Injury:

The moral injury stems from:

- Making scandalous and false statements about the ADF member's character and conduct,
- Wrongfully accusing the ADF member of misappropriating millions in funds,
- Falsely claiming the ADF member deceived soldiers about deployment qualifications, and

- Making unfounded allegations about misuse of Defence resources.

Systemic Failures in Review Process:

Multiple external review bodies failed to address the procedural fairness issues:

- Chief of Army deemed the inquiry appropriate, when clearly it wasn't,
- IGADF declined to investigate further, and
- Commonwealth Ombudsman suggested a claim via the Scheme for Compensation for Detriment caused by Defective Administration (CDDA).

Financial Impact:

- Documented financial losses of \$1.45 million in salary/pension (DVA rate calculation). The ADF member was unable to pursue legal action due to his personal financial constraints against ADF's unlimited resources, and mental state.

Corrective Actions:

- An Independent review conducted by external auditors to thoroughly investigate all aspects of the case was never undertaken. Corrective actions could include:
 - A formal retraction of false allegations, particularly regarding the SAS Resources Trust fraud claims, and unauthorised comments about the ADF member and his spouse from all records,
 - The issue of an apology, and
 - Disciplinary action and personal liability measures taken against those responsible for making false allegations, including potential legal consequences and financial accountability for damages caused.
 - A formal acknowledgment of the ADF member's 47 years of exemplary service and contributions to Special Forces, and formal recognition through the Honour and Awards System.

Compensation Plan:

- Financial restitution of the documented \$1.45 million in lost salary and pension benefits
- Additional compensation for:
 - Moral injury and psychological trauma, and
 - Legal costs incurred during the grievance process.

A Summary of PART B: — an affected ADF spouse

Introduction

In Australia's legal framework, comprehensive federal and state laws, reinforced by binding international treaties, exist to safeguard citizens from discrimination. Of particular significance, ADF policies categorically prohibit the inclusion of spouse-related matters in an ADF member Performance Appraisal Report (PAR) - a protection that was flagrantly violated in this case.

What unfolds here is more than a mere administrative oversight - it represents a catastrophic failure of the Defence administrative inquiry system to protect a civilian's fundamental rights. The gravity of this situation is amplified by the Minister of Defence's formal endorsement of Defence position, despite compelling evidence that directly contradicted the inquiry's conclusions. While Defence leadership may attempt to downplay these events as historical anomalies, they constitute a serious miscarriage of justice with enduring consequences.

The unresolved nature of this case negatively impacted the ADF spouse's ability to take pride in their contributions to the ADF as a civilian or their husband's distinguished military service. This case study highlights the profound impact of institutional failure to address legitimate grievances.

Critical Legal and Administrative Failures:

Procedural Unfairness:

The ADF spouse and their husband were denied natural justice by not being given an opportunity to respond to allegations made against them during the inquiry process.

Policy Violations:

The inclusion of allegations about a civilian [ADF spouse] in a military Performance Appraisal Report violates Defence Policy. Additionally, there was deliberate avoidance of writing mandatory Performance Appraisal Reports for 2012 and 2013.

Discrimination:

The handling of the case raises concerns about equal protection under the law, particularly regarding the treatment of a civilian [ADF spouse] by military authorities.

Administrative Law Issues:

The complaint suggests failures in administrative decision-making processes, with both the Commonwealth Ombudsman and Defence Minister allegedly not considering all evidence. Given the severity of these procedural and legal breaches, coupled with the apparent systemic failure to protect civilian rights, the complainant's request for elevation to a Senate Inquiry would not only have been justified but necessary. This case exemplifies the urgent need to address the vulnerability of military spouses when they become entangled in military administrative inquiry processes.

Required Corrective Actions and Reparations:

- Immediate removal of all spouse-related comments from the ADF member's Performance Appraisal Report,
- Formal written apology from Defence to both the spouse and ADF member,
- Official retraction of negative statements made to officials and other parties,
- Review and amendment of the affected Performance Appraisal Reports for 2012 and 2013 and
- Financial compensation for reputational damage and emotional distress.

Systemic Reforms:

- Implementation of robust oversight mechanisms for administrative inquiries involving ADF spouses and civilians,
- Mandatory training for commanding officers on the proper scope and limitations of Performance Appraisal Reports,
- Establishment of an independent review process for complaints involving ADF spouses and civilians, and
- Development of clear guidelines for protecting ADF spouses and civilian rights in military administrative processes.

Overall Conclusions:

This case represents a profound failure of military justice and administrative integrity spanning multiple years. An ADF member with 47 years of exemplary service in the Special Forces became the target of systematic career sabotage through deliberately withheld performance reports and false allegations. The consequences were severe, resulting in documented financial losses of \$1.45 million in salary and pension benefits.

The injustice was compounded by multiple systemic failures: denial of natural justice, predetermined outcomes in review processes, and the unprecedented inclusion of unauthorized comments about the member's spouse in official documentation. Despite clear evidence disproving the allegations - including confirmation from the SAS Resources Trustee and the member's documented exemplary service record- multiple oversight bodies failed to address these grave procedural fairness violations.

This case transcends individual grievance to expose critical vulnerabilities in the military justice system, particularly in protecting both service members and their civilian spouses from administrative abuse. The failure to provide remedy or accountability not only damaged careers and reputations but also undermined the fundamental principles of fairness and due process that should be cornerstones of military administration.

EVIDENCE BRIEF

Specific Elements of Evidence

PART A—an affected ADF member

In 2012, the complainant's ADF career suffered considerable damage due to inappropriate conduct (Unacceptable Behaviour) by a superior. The complainant sought resolution through their Chain of Command, which exacerbated the harm and led to a substantial loss of professional status, reputation, and financial damages (i.e., \$1.45 million dollars in salary/pension calculated over the complainant's life expectancy, at a rate determined by DVA).

The complainant's superior deliberately failed to submit mandatory Performance Appraisal Reports (PARs) for 2012 and 2013. This violation of Defence Policy (DI (A) PERS 116-16) was serious, as PARs are essential to the Performance Management Framework. These appraisals provide crucial data for career planning, promotion opportunities, course selections, and performance-related administrative actions. By failing to submit PARs for two consecutive years, the superior created a significant obstacle that could have ended the complainant's career. The complainant could not resolve this issue at the lowest level, as their chain of command refused to consider the following.

1. During the 2014 Senior Warrant Officer Personnel Advisory Committee (SWO PAC) meeting, the complainant was considered a strong candidate for the position of Sergeant Major of the Special Operations Command (SM SOCOMD). He ranked in the top 1/3 of his cohort. However, after the SWO PAC meeting, he was placed in the bottom 1/3 of a general pool of Warrant Officers and was notified that he would be issued a notification to retire early, as per the Mandatory Initiated Early Retirement (MIER) policy.
2. The Directorate of Soldier Career Management - Army (DSCM-A) violated Defence policy by presenting a member to the SWO PAC without a complete reporting history. The complainant noted their Performance Assessment Reports (PARs) had not been issued prior to their PAC presentation.
3. DSCM-A failed to implement proper administrative procedures to prevent significant harm—which ultimately occurred.

The complainant was instructed to refer the matters to their Chain of Command if they were not satisfied with the advice from DSCM-A and Army Headquarters. Acting on that advice, the complainant submitted a Redress of Grievance which resulted in an Inquiry Officer Inquiry that took FOUR YEARS to conclude.

The Inquiry Officer's findings confirmed that the superior had deliberately withheld PARs, causing direct harm to the complainant. However, the Inquiry Officer neither assessed the extent of damage to the complainant nor arranged for a formal apology or restoration of the complainant's professional standing—actions required by Defence policy. The Inquiry Officer wrongly concluded there was "insufficient evidence to make a finding of Unacceptable Behaviour" against the superior. As a result, no remedial action was taken, even though the superior had admitted to deliberately planning to damage the complainant's career.

In a clear example of victim-blaming, the Inquiry Officer shifted responsibility onto the complainant for failing to obtain their superior's comments in the 2012 and 2013 PARs, despite the superior's admission that he had deliberately withheld these documents.

Ω INTERVENTION POINT Ω

Had the matters been referred to an alternative dispute resolution process at this point; to negotiate corrective action and reparation for the affected ADF member, it could have mitigated further detriment [and trauma] to that member.

The compounding detriment

In the complainant's Redress of Grievance, he obtained a number of successful determinations, including a determination from Major General (MAJGEN) [REDACTED] that the complainant's career had been discriminated against.

You have grounds for complaint in relation to being presented to the Mar 14 SWO PAC without the PARs for 2012 and 2013." And: "While I agree that members share responsibility with their assessors for obtaining PAR, in this case, I consider you took all reasonable action to achieve this outcome, but you were unsuccessful through no fault of your own and for reasons beyond your control." "I am not comfortable with the fact that the PAC failed to consider all of the available information on your performance, especially since you were presented to that out-of-session PAC as a consequence of your reasonable concern that you were presented to the Mar 14 SWO PAC with an incomplete reporting history. I, therefore, have sufficient concern about the validity of the Jun 14 out-of-session PAC outcome to warrant giving you the benefit of any doubt. Accordingly, I find this element of your complaint is sustained.

MAJGEN [REDACTED] further stated that there was:

inconsistency between reporting history and PAC outcomes; the complaint is sustained, and you are to be presented to the 2016 SWO PAC.

Clearly MAJGEN [REDACTED] sought to instil corrective action. However, the 2016 SWO PAC that was convened constituted the very same personnel who had also convened the 2014 SWO PAC. Then in late 2015, a special appointment for [REDACTED] was created. A SWO PAC was NOT officially convened. Instead, a panel of candidates were identified by individuals at DSCM-A. The complainant was excluded from selection. **(denying the complainant's ability to compete equally with his peers)**

Evidence obtained under Freedom of Information later revealed that a telephone conversation occurred between two individuals at DSCM-A who determined that the complainant "was not considered suitable for the [REDACTED]" due to "risks associated with reputation and past performance." One of those individuals had been on the 2014 SWO PAC and subsequent 2016 SWO PAC. After this discovery, the complainant escalated their complaint to the chain of command which determined that:

... you appear to have been discriminated against based on a personal undocumented assessment of SOCOMD rather than having your suitability assessed in comparison with your peers.

And

... you were excluded from consideration for this appointment due to comments that were made by individuals that were not supported by facts or documented evidence.

No action was taken to remedy the detriment to the complainant's career which compounded.

Misconceived Presentation to the 2016 SWO PAC

The complainant was presented to a 2016 SWO PAC but was not selected for promotion. That SWO PAC was constituted by the very same personnel who excluded the complainant from consideration at the 2015 [REDACTED] appointment, and who had also convened the 2014 SWO PAC. The complainant's career and professional reputation was undoubtedly adversely affected.

- The presentation to the 2016 SWO PAC provided the complainant no remedy for redress and was illusory.
- The 2016 SWO PAC and the selection process for the 2015 [REDACTED] position was affected by bias, inappropriate workplace relationships, conflict of interest, and lacked procedural fairness and impartiality, and the outcome for the complainant, was clearly predetermined.
- The 2016 SWO PAC and selection process for the 2015 [REDACTED] position process miscarried by the lack of independence and lack of fresh assessment, and the improper use of rank and position.
- False and malicious allegations were made about the complainant without his knowledge, which denied him procedural fairness.

Further evidence of defective administration shows the Chief of Army ordered 2012 and 2013 PARs to be written four years late, violating Defence Policy by not communicating with the complainant or allowing them to respond to adverse comments. The superior made false claims about the complainant's spouse and deliberately created career-damaging documentation that prevented fair peer competition. The complainant pursued the Redress of Grievance of the matters and whilst he succeeded in having the Notification of Management Initiated Early Retirement (MIER) overturned, the complainant was downgraded to a non-designated position for three years, pending him reaching Compulsory Retirement Age in 2018. His career aspirations were vexatiously destroyed through deliberate lies and maladministration and misfeasance.

Evidence of Maladministration and Misfeasance

Information obtained under the Freedom of Information Act (FOI) after the conclusion of the Inquiry Officer Inquiry, revealed that during the 2014 SWO PAC the then [REDACTED] made scandalous and false statements about the complainant which was information provided to the Inquiry Officer. Specifically, that the complainant:

was reprimanded by a previous SOCAUST over raising money for a fledgling SAS Resources Trust through direct approaches to industry and State Government officials that gave the impression this was a sanctioned approach. A significant amount of money was raised (in the order of \$7,000,000 to \$10,000,000) with limited oversight by the HQ. When this was realised, a constitution and appropriate funds management was commenced, and large discrepancies in accounting for the donated funds were found. Disciplinary action against the Defence member was not taken as it would have led to reputational damage to the SASR and hurt a number of the Defence member's followers who assisted him in the fundraising. The Defence member was counselled and moved to Canungra.

And:

A subsequent investigation found that the Defence member had told the soldiers he could get them qualified or get recognition of current competency that would allow them to deploy on operations when he did not have the authority to do either of these things. Many

of the soldiers dropped the issue after it was explained to them that the Defence member did not have the authority to assure them, they could deploy, however, one member was still pursuing compensation about this matter at the end of [date redacted], and the matter has been brought to the attention of CA and CDF.

And:

During a PAC when the ADF member was being considered for a position, one of the PAC members stated he did not believe the ADF member was appropriate for the particular appointment due to his previous interactions. The PAC member then described an incident from the 1990s in which the ADF member used range refurbishment stores and funds, and then requested components from other Services or units, to make three-dimensional mock-ups for the Canungra Mess area at Canungra. The ADF member convinced other members to assist him in breaching governance rules to reallocate resources, make official requests for an unsanctioned project, and compile requests to appear as though the resources would be used for military training activities when the activity was more in support of his role as the supervisor/assistant to the Mess.

These statements are entirely false but were disclosed to the Inquiry Officer. They were not disclosed to the complainant. The Inquiry Officer hid this critical information from the complainant which is contrary to ADF Policy that affords complainants the right to know of any proceedings that would involve them, and that could result in adverse findings. These actions denied the complainant an equal opportunity to appropriately defend themselves against false allegations made in secret to the Inquiry Officer. Had the complainant an opportunity to defend themselves, then the following could have been argued in their defence, that:

- The complainant was never "counselled and moved to Canungra." Employment records show that from 1993 to 1995, the complainant received a promotional posting to Canungra.
- Throughout his entire service with the ADF, the complainant has never received any reprimands. No disciplinary or counselling records exist to substantiate the allegations.
- The complainant has never been a supervisor/assistant to any Mess in their entire career and had no access to Defence funds. The Inquiry Officer could have easily verified the expenditure of Mess funds through a simple audit. The Inquiry Officer did not bother to do any due diligence on allegations of fraud.
- The complainant used their personal funds to transform the Canungra Mess into a learning centre for Defence members. While they neither sought nor received reimbursement from the Army, the complainant was awarded an ADF Commendation for their contribution to this project.
- The complainant did not raise money for the SAS Resources Trust or was involved with the SASR Trust. It is inconceivable that the SASR Commanding Officer, the board of Trustees, the CDF, and the Australian Tax Office would cover up financial discrepancies of any amount, let alone \$7-10 million dollars, as inferred by [REDACTED]. Evidence from the SAS Resources Trustee to the complainant's spouse refutes the claims by [REDACTED] that the complainant misappropriated \$7- \$10 million dollars. The complainant's spouse wrote to the SAS Resources Trustee upon learning that allegations of fraud were made against the complainant (refer to the letter on the next page).



8th July 2019

[REDACTED]
[REDACTED]@gmail.com

Dear [REDACTED]

Your email came as a significant surprise to the SAS Resources Trust, because we have never heard anything at all about any of the matters to which you refer.

Further, the SAS Resources Trust has never lost any money that had been received by it, whether due to misappropriation or any other cause (let alone between AUD\$7-\$10 million dollars) since we were established in October 1996.

Additionally, since 1996 our accounts have been audited on an annual basis by Ernst & Young, and having been both the original Trust lawyer for 15 years and a Trustee since inception, I can say with confidence that no such issue has ever been raised in their annual audit.

As to whether or not any money that was intended to be donated to the SAS Resources Trust by any group or individual, was not paid to and received by us as intended, is concerned, we have similarly never heard of any such event and cannot comment on any such a matter.

Beyond that there is really nothing more I can add.

Yours sincerely


[REDACTED] Trust

Peace of mind for our SAS and their families

PO Box 633 Nedlands WA 6908 P 08 5585 8887 E admin@sasresourcesfund.org.au
ABN 62 130 715 704

Material Facts and Evidence Supporting Administrative Law Challenge:

- The establishment of the SAS Resources Trust is documented to have occurred after the Blackhawk incident in Townsville on June 12, 1996. Any allegations of fund misappropriation by the complainant are demonstrably false, as the Trust did not exist during the complainant's posting to Canungra. Such allegations constitute defamation and have caused significant reputational damage.
- Documentary evidence confirms the complainant's return to SASR from Canungra predated the Black Hawk Accident. The subsequent promotion to Squadron Sergeant Major (SSM) of Base Squadron was based on verified exemplary service records at Canungra, demonstrating a clear breach of procedural fairness in subsequent decisions.
- Official military records demonstrate the complainant's distinguished operational deployment history with SASR and subsequent promotion to SSM of 1 SAS Squadron, specifically tasked with unit reconstruction following the documented Blackhawk incident. This exemplary service record contradicts any suggestion of misconduct.
- The complainant maintained Top Secret Positive Vetting (TSPV) clearance throughout their entire military service spanning four decades, which evidences consistent adherence to the highest standards of integrity and conduct required for such clearance. The unfounded allegations have caused severe psychological distress and moral injury.

The following jurisdictional errors and breaches of natural justice are argued concerning the detriments to the complainant:

- The decision made to the complainant's detriment constitutes a clear instance of unreasonableness, as no reasonable decision-maker could have arrived at such a conclusion having regard to all relevant facts and circumstances.
- The decision to accept unsubstantiated allegations as factual in determining the complainant's promotion suitability represents a manifest failure to afford procedural fairness, particularly given the complainant's exemplary service record and unblemished disciplinary history.
- Both the SWO PAC and Inquiry Officer committed jurisdictional error by failing to consider crucial evidence: specifically, the chronological impossibility of the allegations, which could have been verified through the SAS Resources Trust records or the complainant's PMKEYs posting history.
- The decisions of both the SWO PAC and Inquiry Officer were legally unreasonable, being so unreasonable that no reasonable person could have exercised the power in such a manner, constituting a clear breach of administrative law principles.
- All decision-makers involved failed to uphold the principles of legal reasonableness, resulting in decisions that were legally invalid and caused significant moral injury to a decorated service member.

Compounding Defective Administration

When the Inquiry Officer Inquiry concluded, the complainant escalated their complaint for an EXTERNAL review, to which the following responses are summarised below:

Chief of Army concluded that “the Inquiry Officer Inquiry was conducted in an appropriate and transparent manner and there was sufficient evidence to support the findings.”

Chief of Defence Force concluded similarly through an Australian Government solicitor who responded on behalf of the CDF stating that they had:

reviewed the material relating to your client and have been unable to identify any basis for a cause of action that your client might have against the Commonwealth in respect of the issues you address in your [REDACTED] letter. However, against the possibility that you are able to identify a cause of action, we have instructions to meet the cost of the preparation by you of a statement of claim to be filed in the Federal Court, identifying in the form of a pleading the:

- a. factual matters relied on by [REDACTED]*
- b. cause of action asserted to exist; and*
- c. any damage said to have suffered.*

The Commonwealth will meet the reasonable cost of the preparation of the proposed Statement of Claim, such costs to be assessed (in the absence of an agreement) by reference to Schedule 3 of the Federal Court Rules 2011 and up to a maximum of \$5,000.

The complainant did not pursue their offer because he could not afford a protracted legal debate, whereas, the ADF has unlimited financial resources.

IGADF Response: “A thorough assessment has been undertaken of your submission and other relevant material, particularly the report of the [REDACTED] inquiry. Having considered the matter, the IGADF is satisfied the inquiry was comprehensive, and the inquiry report was legally reviewed and validated. Accordingly, he has **determined not to inquire** into the matters you have raised or to refer them for a Senate inquiry.”

Response from Australian Attorney - General: “The matters you raise do not fall within the Attorney-General’s portfolio responsibilities, so your correspondence has been referred to the Commonwealth Ombudsman for their information and response as appropriate.”

Response from the Commonwealth Ombudsman: “I am of the opinion that no investigation is warranted in all circumstances in relation to this. I note that the IGADF assessment stated that it would be open for you to approach the Directorate of Special Financial Claims in relation to a claim for compensation in relation to any financial detriment that may have been suffered by you or your wife. Your best option is to lodge a claim via the Scheme for Compensation for Detriment caused by Defective Administration (CDDA).”

The complainant did not pursue a CDDA claim because, by this stage, he was too traumatised.

Response from the Officer of the Australian Information Commissioner (AOIC): “The OAIC has considered your complaint about Defence and formed the view that there has not been an interference with your privacy.”

Ministerial Response: The complainant elevated his matters to the Minister of Defence and drew attention to the false allegations concerning the SAS Resources Trust.

the Inquiry Officer was not required to seek [the complainant's] comment on alleged past matters or the witness statement about the SAS Resources Trust, and they had no impact on the outcome of the Inquiry Officer Inquiry.

AND the Minister said of the complainant that he was:

unable to provide any evidence that substantiated his claim that his superior officer had adversely impacted the considerations of his suitability for career advancement.

The Minister's statements ignored the fact that the complainant was never informed of any allegations of fraud. The Terms of Reference outline the path by which an Inquiry officer is to take, however, the Minister of Defence and the Chief of the Defence Force have broad powers, incidental to their statutory functions under the Defence Act 1903(Defence Act), to inquire into any matter concerning the Defence Force.³⁸

Defence Legal Advice: The complainant sought legal advice from a senior Defence Legal Officer who Defence allocated [paid] three hours to conduct a review of what had become a highly complex matter. His statement alone should have caused someone to question the validity of the Defence Inquiry. The complainant made certain that everyone from the Chief of Army to the Minister (including the IGADF) had a copy of the barrister's statement.

"There were, as you referred to in the documents, significant adverse allegations made as to you to the Inquiry Officer (IO) which were not put to you in any way and as to which you did not have an opportunity to respond. Those significant adverse allegations were then included within the evidence before the IO and were included with the IO report in the evidence. Those allegations appear from the IO report to have been material to findings made by the IO, having regard to statements by the IO in the report. That significant adverse evidence was not within your knowledge at all until after you received it by an FOI request. Those specific circumstances are a denial of procedural fairness to you."

██████████
Defence Legal Officer (Barrister)

The complainant was defeated and left mentally distraught. Throughout what was a long-running dispute with the Command, the complainant was:

- denied natural justice in the absence of good governance and accountability, and subjected to having Army Regulations misused against him,
- maliciously portrayed by false statements alleging he mishandled millions of dollars,
- refused the opportunity to correct misinformation about himself and events,
- suffered the consequences of a flawed legal system in the ADF, and was subjected to a

³⁸ Karen Elphick (02 Oct 2019), 'Legal framework for Defence administrative inquiries into a 'matter concerning the Defence Force': a quick guide,' Laws and Bills Digest Section. Retrieved from https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/Quick_Guides/LegalFrameworkDefence.

psychological assessment at the instruction of his superior who sought to use that to justify his removal from a representational overseas posting,

- issued a Mandatory Initiated Early Retirement Notification Letter to prematurely end his career,
- unsupported by those in superior positions, all the way up to Ministerial level,
- deprived the opportunity for well-established legal principles to operate in his favour, and
- subjected to slanderous comments about himself and his spouse (Refer to case study 2).

There were significant adverse allegations made to Inquiry Officer which were not put to the complainant. Those allegations were material to findings made by Inquiry Officer. Those specific circumstances are a denial of procedural fairness to the complainant.

The Inquiry Officer did not adhere to ADF Policy which requires Inquiry Officers ensure they do not “make an administrative decision without first affording the affected member(s) procedural fairness” (ADFP 06.1.3 Guide for Administrative Decision-Making Chapter 2).

The detriment to the complainant’s career resulted in significant financial losses (i.e., \$1.45 million in salary/pension calculated over the complainant’s life expectancy (rate determined by DVA).

The complainant had expected to continue his service post CRA, as an Army Reservist (SERCAT 3). These events prevented him from doing so. The complainant was not able to attend his planned farewell from the ADF despite learning that he had been nominated for a Commendation from the Commander of [REDACTED] for his service to the Command in developing [REDACTED] (A witness confirmed seeing the Commendation in the [REDACTED] Office and had knowledge that it was to be presented at the complainant’s planned farewell).

The commendation was never presented.

The complainant suffered considerable damage to his career because of a series of inappropriate conduct by Army personnel. In particular,

- the actions of [REDACTED] were affected by bias and a lack of procedural fairness and the outcome for the complainant was predetermined.
- the actions of the complainant’s superior created a significant career-ending detriment, compounded by the actions of Inquiry Officer, who failed to accord procedural fairness in ‘investigating’ the matters.
- further defective administration resulted from the flawed decision-making of those who undertook an EXTERNAL review of the complaint by the complainant.

These actions combined were misconceived and perpetuated the defective administration of the complainant’s career and caused significant personal and mental injury to him.

EVIDENCE BRIEF

Specific Elements of Evidence

PART B—an affected ADF Spouse

The Matters

While on an overseas military representational posting to the Middle East, my husband frequently travelled to Jordan where he delivered Intensive English Language Testing to military students at the Jordanian Military Language Academy. I was living/working in the Middle East at this time, and on this particular occasion, I accompanied my husband to Jordan where I intended to take my recreational leave, at my own expense.

Officers of the Jordanian Military Language Academy learned that I was in Jordan and extended an invitation for me to visit the academy and provide conversational English instruction to the adult students (they were aware I had teaching qualifications). Declining this offer would have been impolite and could have reflected poorly on Australia and the ADF. My husband informed his superior of this invitation, who acknowledged it as typical of that Army's hospitality. My contributions were well received by the Commandant of the Academy.

A YEAR later, my husband's career suffered significant damage when his superior refused to write his mandatory Performance Appraisal Reports (PAR),³⁹ knowing this would prematurely end my husband's career. In response, my husband submitted a Redress of Grievance through his chain of command.

During this process, we discovered that before our posting to the Middle East, his superior had used my reputation as a human rights advocate to paint a negative image of me, labelling me an activist who lobbied for women's rights. He hoped these characterisations would raise red flags and discourage ADF decision-makers from selecting my husband for the posting. Though his comments failed to achieve their intended harm, they remain on record which I find humiliating.

Additionally, I learned that one hundred redacted pages exist contain information that misrepresents me. This is potentially defamatory. Those pages should be expunged, and I should be given evidence of such action.

My husband's superior further misrepresented my visit to the Jordanian Military Language Academy, in writing, claiming my presence reflected poorly on the ADF. I expressed my outrage to the Chief of Army but was never given any apology. An apology should be forthcoming.

The Chief of Army instructed the superior to write my husband's PARs—FOUR YEARS OUT OF TIME. Moreover, in violation of ADF policy relating to procedural fairness, neither my husband nor I were given any opportunity to counter the misrepresentations written about us.

³⁹ The Performance Appraisal Report (PAR) is a vital component of the Career Management System or Performance Management Framework in the ADF. The data from a PAR is used to develop career plans, identify potential for promotion, postings and courses, as well as manage underperformance where identified. Annual reporting is mandatory according to Defence Policy (DI (A) PERS 116-16). ADF policies do not permit Commanders to include ADF spouses into PARs.

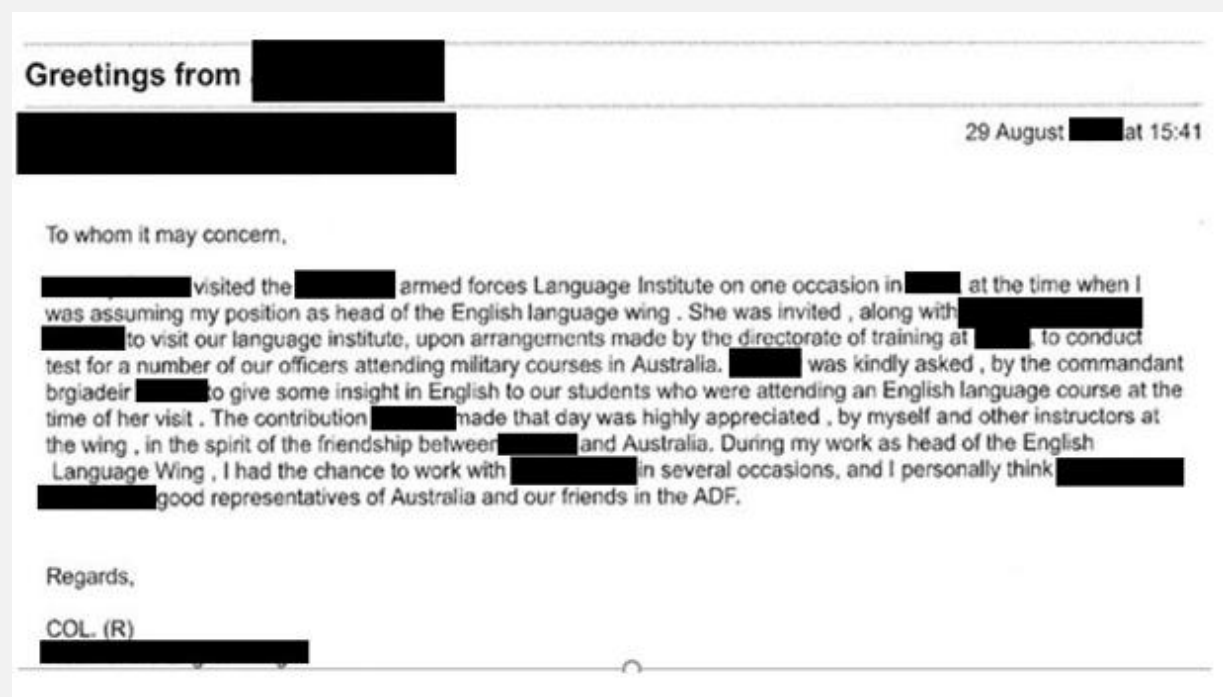
Below is a redacted extract from my husband's Performance Appraisal Report (PAR) that refers to me:

"Regrettably XXXXXXXXX displayed a serious lapse of judgement when he XXXXXX to XXXXX on an XXXX visit to the XXXXX School of Languages. While the XXX were very gallant in welcoming her, her presence reflected very poorly on the ADF. The problem was compounded when he subsequently visited XXX HQ and, when his counterparts realised XXXX was in the car, they displayed their traditional hospitality and invited her into the Headquarters. This scenario should never have arisen."

To my humiliation, I learned that the superior had also made defamatory comments about me in discussion with other Australian Embassy Officials in both countries and other official parties.

The Commandant of the Jordanian Military Language Academy countered all of the allegations and said that my husband and I were "good representatives of Australia and our friends in the ADF." No formal investigation resulted.

(Refer to email below)



I deserved more than just an apology from the ADF - I deserved justice.

Despite my relentless efforts to have false allegations removed from military records, every request was stonewalled.

The Freedom of Information Act, meant to ensure transparency, only revealed further obstruction. The documents I received were almost entirely redacted, with a staggering 98-99% of content deliberately concealed. This systematic suppression of information spoke volumes about the lack of accountability.

My appeals to Service Chiefs for justice were met with a disturbing defence of what was clearly a flawed investigation. They claimed transparency and sufficient evidence, yet the allegations against me violated the ADF's own reporting protocols. The devastating impact of this ordeal forced both me and my husband to seek professional counselling to cope with severe anxiety, depression, and profound trauma.

This wasn't just about my case anymore. Recognising the broader implications, I took decisive action to protect future ADF spouses from similar mistreatment. I pressed for a Senate Inquiry, knowing that only an independent investigation could expose and address these deep-rooted systemic failures.

Determined to create lasting change, I escalated my concerns directly to the Minister of Defence. My goal was not only to address the injustice inflicted upon my husband and me but to ensure no other military spouse would ever face such egregious misconduct.

Senator the Honourable Christopher Pyne
PO Box 6100
Senate Parliament House
Canberra ACT 2600

22 August [REDACTED]

Re: Letter to Minister of Defence – [REDACTED] Spouse Complaint [REDACTED]

Recently I received correspondence [REDACTED], from Mr. Robert Curtin, Chief of Staff for the Hon Darren Chester in response to a complaint I submitted to the Senator the Hon Marise Payne, former Minister for Defence regarding a flawed Army Inquiry. My complaint was that false allegations were made about me in my husband's Performance Appraisal Report, and this was used as evidence in an Inquiry report of [REDACTED] raised by my husband [REDACTED]

In light of your recent appointment, I wish to bring these matters to your attention as it is my opinion that Defence has acted inappropriately towards me as an Australian citizen and civilian.

False and unsubstantiated allegations were made about me by an Army [REDACTED] officer in my husband's Performance Appraisal Report 2012. Defence has not provided any justification that would reasonably support their claim that the allegation about me were in any way accurate or appropriate. The Inquiry officer ignored counter evidence I provided to the false allegation contained in the PAR. The fact that allegations were made about me and used by the Army [REDACTED] officer in an attempt to discredit my husband in his Performance Appraisal Report is not only extraordinarily wrong, but it is in violation of Defence Policy.

It was upheld by the Inquiry Officer that the Army officer deliberately strategised to avoid writing my husband's Performance Appraisal Report 2012 and 2013. This evidences that correct procedures were not followed in accordance with Defence Policy as it was claimed by Chief of Army and Chief of the Defence Force. Refusing to follow mandatory Defence procedures is unacceptable behaviour and yet no corrective action was taken to remedy the detriment to me or to my husband. As you are aware, the law requires that all persons are equal before the law and are entitled without any discrimination to equal protection of the law. Scandalous and false allegations were made to the

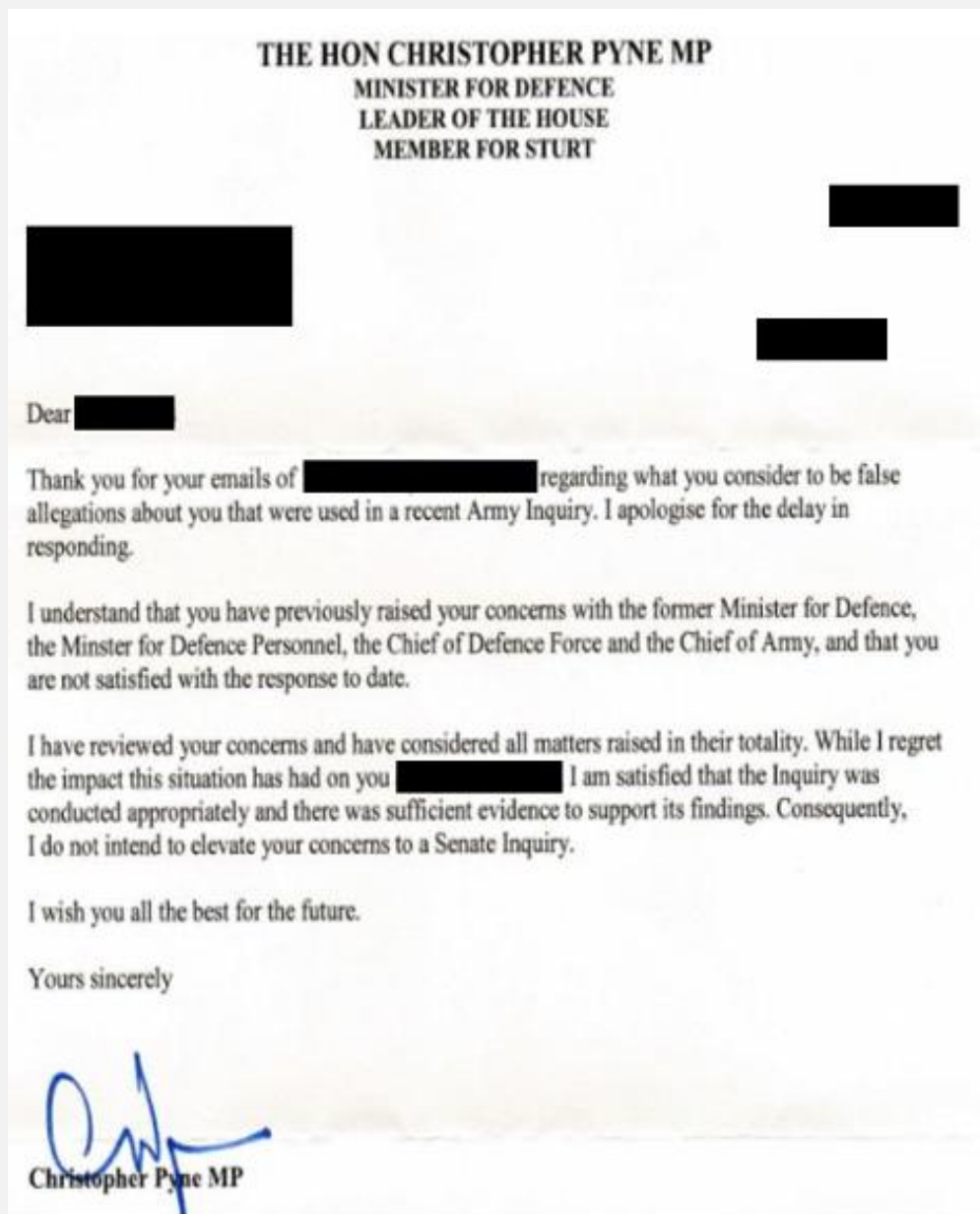
Inquiry officer which we were not given an opportunity to respond to or present arguments against, and that demonstrates that we were denied procedural unfairness and natural justice.

I contend that both Offices of the Commonwealth Ombudsman and the Defence Minister have taken Army's version of events without considering all the matters in totality. The Army Inquiry was not only flawed but unlawful. Given the seriousness of these matters and the overwhelming evidence we are able to present to ensure an honest and accurate account of the matters, I respectfully request that they be elevated to a Senate Inquiry.

I look forward to your response.

Regards,

The Defence Minister's response



Ministerial Failings

Despite the Minister's expressed satisfaction with the Inquiry's conduct and evidence, I firmly believe this decision was wrong and warrants a Senate review. There were serious procedural violations: the Army officer deliberately avoided compliance with Defence Policy, and my husband and I were denied the opportunity to respond to allegations or present counter-arguments—a clear breach of procedural fairness. False allegations about me, a civilian, were made in an official military document, violating Defence Policy and impacting my civil rights as an Australian citizen. The review process was inadequate, with both the Commonwealth Ombudsman and Defence Minister's offices accepting the Army's version without fully considering all evidence. The case raises broader systemic questions about military accountability, civilian rights, and Defence's complaint handling procedures, making it appropriate for parliamentary oversight.

The key detriments identified in this case study include:

Delayed Performance Appraisal Reports (PARs) – My husband's superior failed to write PARs for 2012 and 2013, which were four years overdue and significantly harmed his career.

False allegations about my visit to the Military Language Academy were included in official military records and shared with multiple officials, damaging my reputation.

Denial of procedural fairness:

- No opportunity to respond to allegations
- Counter-evidence was ignored by the Inquiry Officer
- 98-99% of FOI documents were redacted

Emotional impact:

- Required professional counselling
- Experienced anxiety and depression
- Profound sense of violation
- Long-term consequences - The events continue to overshadow the family's four decades of contribution to the ADF
- No remedial action was taken despite evidence of policy violations and improper conduct

Conclusion

This case exemplifies how ADF families can suffer from flawed Inquiry Officer Inquiries, highlighting the importance of conducting inquiry processes effectively and fairly to ensure justice and proper recourse for those affected.

Even today, these events provoke strong emotions in me [and my husband] and overshadow our ability to fully appreciate our family's four decades of outstanding service to the ADF.